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23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA

25 TAimed BIOLOGICS, INC.

26) Case No.: CV10-3260 LB

27 Plaintiff,

) ACTION FILED: June 10, 2010

vs.

28 NUMODA CORPORATION,

) **STIPULATED PROTECTIVE ORDER**

29 Defendant.

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosures and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the time limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3 below, that this Stipulated Protective order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
13 file material under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored, or maintained) or tangible things that contain the following:
19 confidential, sensitive, or nonpublic financial information or statements;
20 proprietary business and trade secret information, including business plans;
21 individual personal information that is protected from disclosure under state or
22 federal law, including any patient of any clinical trial sponsored or conducted by
23 any Party; or any other information whose disclosure would create a substantial
24 risk of serious injury to the Designating Party.

25 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
26 well as their support staff).

- 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
- 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things) that are produced or generated in disclosures or responses to discovery in this matter.
- 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.
- 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.
- 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.
- 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.
- 2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).
- 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.
- 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

1 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL.”

3 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 **3. SCOPE**

6 The protection conferred by this Stipulation and Order covers not only Protected Material
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations or presentations by Parties or their Counsel that might reveal Protected Material.
10 However, the protections conferred by this Stipulation and Order do not cover the following
11 information: (a) any information that is in the public domain at the time of disclosure to a
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
13 a result of publication not involving a violation of this Order, including becoming part of the
14 public record through trial or otherwise; and (b) any information known to the Receiving Party
15 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
16 obtained the information lawfully and under no obligation of confidentiality to the Designating
17 Party. Any use of Protected Materials at trial shall be governed by a separate agreement or
order.

18 **4. DURATION**

19 Even after final disposition of this litigation the confidentiality obligation imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
21 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
22 and defenses in this action, with or without prejudice, and (2) final judgment herein after the
23 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of time pursuant to
25 applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items from protection
4 under this Order must take care to limit any designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate
6 for protection only those parts of material, documents, items or oral or written
7 communications that qualify – so that other portions of that material, documents,
8 items or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that
11 are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or retard the case development process
13 or to impose unnecessary expenses and burdens on other parties) expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party
17 must promptly notify all other Parties that it is withdrawing the mistaken
18 designation.

19 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
20 (see e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
21 ordered, Disclosure or Discovery Material that qualifies for protection under this
22 Order must be clearly so designated before the material is disclosed or produced.
23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix the legend
27 “CONFIDENTIAL” to each page that contains protected material. If only

1 a portion or portions of the material on a page qualifies for protection, the
2 Producing Party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available
5 for inspection need not designate them for protection until after the
6 inspecting Party has indicated which material it would like copied and
7 produced. During the inspection and before the designation, all of the
8 material made available for inspection shall be deemed
9 “CONFIDENTIAL.” After the inspecting Party has identified the
10 documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection
12 under this Order. Then, before producing the specified documents, the
13 Producing Party must affix the “CONFIDENTIAL” legend to each page
14 that contains Protected Material. If only a portion or portions of the
15 material on a page qualifies for protection, the Producing Party also must
16 clearly identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins.)

18 (b) for testimony given in deposition or in other pretrial or trial proceedings,
19 that the Designating Party identify on the record, before the close of the
20 deposition, hearing or other proceedings, all protected testimony.
21 (c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent
23 place on the exterior of the container or containers in which the
24 information or item is stored the legend “CONFIDENTIAL.” If only a
25 portion or portions of the information or item warrant protection, the
26 Producing Party, to the extent practicable, shall identify the protected
27 portion(s).

1 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the
3 Designating Party's right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a Designating Party's
10 confidentiality designation is necessary to avoid foreseeable, substantial
11 unfairness, unnecessary economic burdens, or a significant disruption or delay of
12 the litigation, a Party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process by providing written notices of each designation it is challenging and
17 describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with the specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue;
22 other forms of communications are not sufficient) within 14 days of the date of
23 service of notice. In conferring, the Challenging Party must explain the basis for
24 its belief that the confidentiality designation was not proper and must give the
25 Designating Party an opportunity to review the designated material, to reconsider
26 the circumstances, and, if no change in designation is offered, to explain the basis
27 for the chosen designation. A Challenging Party may proceed to the next stage of

1 the challenge process only if it has engaged in this meet and confer process first
2 or establishes that the Designating Party is unwilling to participate in the meet and
3 confer process in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion to retain
6 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
7 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
8 days of the parties agreeing that the meet and confer process will not resolve their
9 dispute, which is earlier. Each such motion must be accompanied by a competent
10 declaration affirming that the movant has complied with the meet and confer
11 requirements imposed in the preceding paragraph. Failure by the Designating
12 Party to make such a motion including the required declaration within 21 days (or
13 14 days, if applicable) shall automatically waive the confidentiality designation
14 for each challenge designation. In addition, the Challenging Party may file a
15 motion challenging a confidentiality designation at any time if there is good cause
16 for doing so, including a challenge to the designation of a deposition transcript or
17 any portions thereof. Any motion brought pursuant to this provision must be
18 accompanied by a competent declaration affirming that the movant has complied
19 with the meet and confer requirements imposed by the preceding paragraph.
20 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Frivolous challenges, and those made for an improper purpose
22 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
23 expose the Challenging Party to sanctions. Unless the Designating Party has
24 waived the confidentiality designation by failing to file a motion to retain
25 confidentiality as described above, all parties shall continue to afford the material
26 in question the level of protection to which it is entitled under the Producing
27 Party's designation until the court rules on the challenge.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a Non-Party in connection with this case only
4 for prosecuting, defending or attempting to settle this litigation. Such Protected
5 Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Item. Unless otherwise ordered
13 by the court or permitted in writing by the Designating Party, a Receiving Party
14 may disclose information or items designated as “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this litigation and who have signed
18 the “Acknowledgement and Agreement to Be Bound” that is attached to
19 hereto as Exhibit A.

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation,
22 and who have signed the “Acknowledgement and Agreement to be Bound”
23 (Exhibit A);

24 (c) Experts (as defined in this Order) of the Receiving Party as to whom
25 disclosure is reasonably necessary for this litigation and who have signed the
26 “Acknowledgement and Agreement to Be Bound” (Exhibit A);

27 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, mock
2 jurors and Professional Vendors to whom disclosure is reasonably necessary
3 and who have signed the "Acknowledgement and Agreement to Be Bound"
4 (Exhibit A),

5 (f) during their depositions, witnesses in this action to whom disclosure is
6 reasonably necessary and who have signed the "Acknowledgement and
7 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
8 Designating Party or ordered by the court. Pages of transcribed deposition
9 testimony or exhibits to depositions that reveal Protected Material must be
10 separately bound by the court reporter and may not be disclosed to anyone
11 except as permitted under this Stipulated Protective Order.

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information.

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
15 **OTHER LITIGATION**

16 If a Party is served with a subpoena or a court order issued in other litigation that compels
17 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
18 Party must:

19 (a) promptly notify in writing the Designating Party. Such notification shall include
20 a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in
22 the order litigation that some or all of the material covered by the subpoena or
23 order is subject to this Protective Order. Such notification shall include a copy of
24 this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with the
 2 subpoena or court order shall not produce any information designated in this action as
 3 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
 4 issued, unless the Party had obtained the Designating Party’s permission. The Designating Party
 5 shall bear the burden and expense of seeking protection in that court of its confidential material –
 6 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
 7 Party in this action to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
 9 **THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a Non-Party in
 11 this action and designated as “CONFIDENTIAL.” Such information produced by
 12 Non-Parties in connection with this litigation is protected by the remedies and
 13 relief provided by this Order. Nothing in these provisions should be construed as
 14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce a
 16 Non-Party’s confidential information in its possession, and the Party is subject to
 17 an agreement with the Non-Party not to produce Non-Party’s confidential
 18 information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-Party that
 20 some or all of the information requested is subject to a confidentiality
 21 agreement with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the Stipulated Protective
 23 Order in this litigation, the relevant discovery request(s), and a reasonably
 24 specific description of the information requested; and

25 3. make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 27 days of receiving the notice and accompanying information, the Receiving Party

1 may produce the Non-Party's confidential information responsive to the discovery
 2 request. If the Non-Party timely seeks a protective order, the Receiving Party
 3 shall not produce any information in its possession or control that is subject to the
 4 confidentiality agreement with the Non-Party before a determination by the
 5 court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden
 6 and expense of seeking protection in this court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 9 Material to any person or in any circumstance not authorized under this Stipulated Protective
 10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 12 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
 13 made of all the terms of this Order, and (d) request such person or persons to execute the
 14 "Acknowledgment and Agreement to Be Bound" that is attached as Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 18 produced material is subject to a claim of privilege or other protection, the obligations of the
 19 Receiving Parties are those set forth in the Federal Rule of Civil Procedure 26(b)(5)(B). This
 20 provision is not intended to modify whatever procedure may be established in an e-discovery
 21 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 22 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 23 communication or information covered by the attorney-client privilege or work product
 24 protection, the parties may incorporate their agreement in the stipulated protective order
 25 submitted to the court.

26 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a
 27 Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 3 seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 5 Order no Party waives any right it otherwise would have to object to disclosing or
 6 producing any information or item on any ground not addressed in this Stipulated
 7 Protective Order. Similarly, no Party waives any right to object on any ground to
 8 use in evidence of any of the material covered by this Protective Order.

9 12.3. Filing Protected Material. Without written permission from the Designating Party
 10 or a court order secured after appropriate notice to all interested persons, a Party
 11 may not file in the public record in this action any Protected Material. A Party
 12 that seeks to file under seal any Protected Material must comply with Civil Local
 13 Rule 79-5. Protected Material may only be filed under seal pursuant to a court
 14 order authorizing the sealing of the specific Protected Material at issue. Pursuant
 15 to Civil Local Rule 79-5, a sealing order will issue only upon a request
 16 establishing that the Protected Material at issue is privileged, protectable as a
 17 trade secret, or otherwise entitled to protection under the law. If a Receiving
 18 Party's request to file Protected Material under seal pursuant to Civil Local Rule
 19 79-5(d) is denied by the court, then the Receiving Party may file the information
 20 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
 21 instructed by the court.

22 **13. FINAL DISPOSITION**

23 Within 60 days after the final disposition of this action, as defined in Paragraph 4, each
 24 Receiving Party must return all Protected Material to the Producing Party or destroy such
 25 material. As used in this subdivision, all "Protected Material" includes all copies, abstracts,
 26 compilations, summaries, and any other format reproducing or capturing any of the Protected
 27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must

1 submit a written certifications to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
3 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
4 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
7 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
8 product, and consultant and expert work product, even if such materials contain Protected
9 Material. Any such archival copies that contain or constitute Protected Material remain subject
10 to this Protective Order as set forth in Section 4 (DURATION).

11 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

13 DATED: January 12, 2011

/s/ Cedric C. Chao
By: Cedric Chao
Attorneys for Plaintiff Taimed Biologics, Inc.

16 DATED: January 12, 2011

/s/ Elizabeth Williams
By: Elizabeth Williams
Attorneys for Defendant Numoda Corporation

18 **GENERAL ORDER 45 ATTESTATION**

20 I, Elizabeth Williams, am the ECF User whose ID and password are being used to file the
21 Stipulated Protective Order. In compliance with General Order 45, X.B., I hereby attest that
22 Cedric C. Chao concurred in this filing.

23 /s/ Elizabeth Williams
24 By: Elizabeth Williams
25 Attorneys for Defendant Numoda Corporation

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED: January 14, 2011



EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ (Print or type full name), of _____ (print or type full address), declare under penalty of perjury that I have its entirety and understand the Stipulated Protective Order that was issued by the United District Court for the Northern District of California on _____ in the case of *TaiMedics, Inc. v. Numoda Corporation, Case No. CV10-3260 LB*. I agree to comply with and be by all the terms of this Stipulated Protective Order and I understand and acknowledge that to so comply could expose me to sanctions and punishment in the nature of contempt. I only promise that I will not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with the terms of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ (print or type full name) of _____ (print or type full address and telephone number) as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature:

ND: 4837-2563-5848

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